

Competition in Industries Recently  
Deregulated in Japan

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## **Abstract**

Deregulation in Japan has been caused by both external and internal factors. External factors include requests by the United States and the European Community, where deregulation measures were extensively implemented in order to facilitate these countries' enterprises access into Japan's market. Internal factors include the necessity for the privatization of state or public corporations in order to utilize private initiative to its fullest extent and for the reduction of differences between domestic and international prices.

# COMPETITION IN INDUSTRIES RECENTLY DEREGULATED IN JAPAN

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## INTRODUCTION

Deregulation in Japan has been caused by both external and internal factors. External factors include requests by the United States and the European Community, where deregulation measures were extensively implemented in order to facilitate these countries' enterprises access into Japan's market. Internal factors include the necessity for the privatization of state or public corporations in order to utilize private initiative to its fullest extent and for the reduction of differences between domestic and international prices.

Deregulation in Japan was first implemented in 1967 as a way of reducing governmental approval. During the period between fiscal year (or "FY") 1981 and FY 1986, the emphasis of deregulation was put mainly on the reduction of the people's burden, simplification of administrative process, and promotion of private initiative. During the period between FY 1987 to FY 1994, deregulation was also aimed at the enrichment of people's lives, transformation of industrial structure, improvement of market access, creation and enlargement of new enterprises, and the reduction of differences between domestic and foreign prices. During the period between FY 1995 and FY 1998, the objectives of the deregulation program taken by the Japanese Government were to transform its national socioeconomic system into one that is internationally open, free, fair, founded upon the principle of market mechanism and individual accountability, and to replace the administrative process of prior supervision with one of an ex-post facto checking system.

In April 1997, the Japanese Agency for Economic Planning ("Agency") estimated the economic effect of recent deregulation measures taken by the Japanese Government during the period between FY 1990 and FY 1995.<sup>1</sup> For the effect of deregulation

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1. MINISTRY OF POSTS AND TELECOMMUNICATION, FISCAL YEAR 1997 ANNUAL REPORT ON DEREGULATION 36-40 (1998).

measures on the market, the Agency defines the effects of enlargement of consumption and facilities investment resulted from deregulation measures as demand effect. Demand effect is estimated to be as large as ¥7.2 trillion annually on average—the average being the ratio over nominal GDP, 1.55%—in determining the effect in the market of telecommunications, distribution, land and housing, airlines, and local beer manufacturers. The effect of these deregulation measures is rather large and as follows:

- Demand effect by the increase of new large scale retail stores following from deregulation of the Large Scale Retail Store Act (“LSRSA”)<sup>2</sup> is estimated to be ¥4.5 trillion annually on average. On the other hand, established small-medium retail stores suffered from a loss of sales of ¥600 billion annually on average because of the entry of new large-scale stores. On balance, demand effect by deregulation of the LSRSA turns out to be ¥3.6 trillion.
- The demand effect by the abrupt diffusion of mobile phones and cable television resulting from deregulation of telecommunications is estimated to be ¥2.1 trillion annually on average. Demand effect by the spread of broad spectrum television broadcasting is also estimated to be ¥200 billion annually on average. Demand effect by deregulation is estimated to be ¥700 billion in convertible bonds, ¥190 billion in land and housing, ¥100 billion in dispatching personnel, ¥72 billion in airlines, and ¥16 billion in local beer.

As for the effect of deregulation on consumer benefits, the Agency defines the demand figure multiplied by the difference between the hypothetical price level in case of non-deregulation and real price level as consumer surplus. Consumer surplus is estimated to be as high as ¥4.6 trillion annually on average—the ratio over nominal GDP, 0.98%, which indicates that the beneficiary burden (including enterprises) is reduced by 0.98% of their income—in the market of telecommunications, alcoholic distribution, cosmetics, and medicine, and the overhauling of

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2. Ministry of Foreign Affairs of Japan, Large Store Retail Store Act (visited Sept. 16, 1999) <<http://www.infojapan.org/region/n-america/us/economy/date/dereg9805.html>> (on file with the *Fordham International Law Journal*).

automobiles, airlines, petroleum products, electricity, and gas. The merit, of which is rather high, is as follows:

- Consumer surplus resulting from charges reduced by more than seventy percent, compared with those in 1985 in domestic and international telecommunications and mobile phones, is the highest. It is ¥1.2 trillion annually on average during the period between FY 1990 and FY 1995.
- Consumer surplus resulting from charges in electricity was reduced by 6.29% through method calculating charges on the basis that efficiency is estimated to be ¥1 trillion annually on average during the period between FY 1995 and FY 1996.
- Consumer surplus from the reduced price of gasoline resulting from liberalization of imports of petroleum products is ¥900 billion annually on average during the period between FY 1994 and FY 1996.

Consumer surplus is estimated to be ¥700 billion in convertible bonds, ¥510 billion in overhauling of automobiles, ¥140 billion in alcoholic distribution, ¥100 billion in airlines, ¥91 billion in commercial papers, ¥48 billion in gas, and ¥40 billion in cosmetics and medicine.

The following sections examine in detail the conspicuous effect of deregulation in both the telecommunications and aviation business.

## I. DEREGULATION IN TELECOMMUNICATIONS BUSINESSES

### A. *The First Info-Communications Reform*

Until FY 1984, Nippon Telegraph and Telephone Public Corporation ("NTT") and KDD Co.<sup>3</sup> had respectively monopolized Japan's domestic and international telecommunications because of their technological integrity. Technological innovations such as fiber-optic networks and communication satellites, however, reduced the necessity for technological integrity to be maintained by each monopolistic corporation. A single corporation by itself would find difficulty in responding to its users' diverse needs. Thus, on April 1, 1985, the Government of Japan

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3. KDD Co. is an abbreviation of Kokusai Denshin Denwa Co., which means International Telegraph and Telephone Co.

introduced the principle of competition into the telecommunications market in order to vitalize the telecommunications business and to respond to such diversified needs.

On the one hand, NTT was privatized in response to the privatization of British Telecom in August 1984. Although NTT was transformed into a company, it had special status in which whole shares were held by the government. Although two-thirds gradually were sold later, the foreign capital ratio would be limited to one-fifth of its total shares with voting rights, and the resolution to appoint directors and auditors became valid only after approval by the Ministry of Posts and Telecommunications ("MPT"). NTT's activities were deregulated as follows: the principle that NTT's tariff and budget had to be approved by the Diet was abolished; tariff approval by the Diet shifted into tariff approval by the MPT; and the regulation of NTT's investment was withdrawn.

On the other hand, the MPT allowed new entry of Type I carriers that offered services by establishing their own telecommunications circuit facilities. A Type I carrier's new entry is subject to the MPT's approval because of its strong public characteristics. The MPT's approval standards regulate whether the carrier's service supply is appropriate to demand in the service area, whether their circuit facilities are in excess, and whether their financial base is solid and their technological ability is enough.

The MPT liberalized circuit usage by Type II carriers that provide services by leasing telecommunications circuit facilities from Type I carriers. There exist special and general Type II carriers. Since special Type II carriers communicate with foreign spots and provide service to many unspecified users, their entry is subject to registration in order to prevent a possible interruption of telecommunications service due to a system breakdown. As General Type II carriers provide service to specified persons belonging to the same business group, their entry need only notification. The MPT also deregulated the policy for the lease of terminal equipment in order to permit sales of telephone sets as long as they satisfy certain standard of technology.

### *B. New Telecommunications Market Entry*

By such regulation measures, the number of new Type I carriers increased from five in FY 1985 to 142 in FY 1997. Among

them, the number of mobile carriers markedly increased from two in FY 1987 to ninety in FY 1996. In FY 1997, the annual sales of total Type I carriers amounted to ¥13.3 trillion, with a growth rate of 9.6% over the previous year—in contrast with sales decreases in other industries. In particular, the growth rate of mobile carriers' sales in FY 1997 was 29.9%. New Type I carriers occupied a sales share of 50.1%, totaling ¥5.9 trillion; in particular, the mobile carriers' share was 39.7%, while NTT—an old Type I carrier—held a share of 47.3%, totaling ¥6.3 trillion. The number of Type II carriers also remarkably increased from 209 in FY 1985 to 5871 in FY 1997, in particular, general Type II carriers increased from 200 in FY 1985 to 5776 in FY 1997.

International investment in Japan's telecommunications carriers is spreading. Examples of main Type I carriers and special Type II carriers with more than a five percent foreign capital ratio are shown at Table 2. The foreign capital ratio in Type I carriers was limited to one-third of their whole shares with voting rights until February 1998, while there has been no such restriction on Type II carriers. The foreign capital ratio in NTT and KDD as of March 31, 1998 was only 3.97% and 3.14% respectively due to restrictions on foreign investment in these two champion companies. Such restriction on KDD, however, was abolished in July 1998 when KDD was completely privatized.

### *C. Transition of Type I Carriers' Market Share*

In domestic telecommunications, new common carriers ("NCC") occupied a share of only 7.9% of the telephone market of ¥5,211 billion of revenue basis in FY 1996 while NTT held a market share of as much as 92.1%. In the telephone market, which totaled 88.23 billion calls in FY 1996, NCCs occupied a share of 9.5%, while NTT held a 90.5% share. Total calls consisted of 69.4 billion intra-prefectural calls, which was 78.7% of the total market and 18.83 billion inter-prefectural calls. In the market of inter-prefectural calls, NCCs occupied as much as a 35.6% share, while NTT held a 64.4% share. The NCCs' share of the same market remarkably increased from 22.4% in FY 1991 to 35.6% in FY 1996, while its market share of total calls slightly increased from 4.7% in FY 1991 to 9.5% in FY 1996.

In the leased circuit market of ¥621 billion in revenue basis in FY 1996, NCCs occupied a seventeen percent share, while

Table One: Number of Telecommunications Carriers

	FY 84	85	86	87	88	89	90	91	92	93	94	95	96	97	98
Type I Carriers	2	7	13	37	45	62	68	70	80	86	111	126	138	153	178
NTT	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
NTT Mobile Communications Network, Inc., etc.	—	—	—	—	—	—	—	—	1	9	9	9	9	9	9
KDD	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
New Type I Carriers	5	1	5	5	3	60	66	68	77	75	100	115	127	142	167
Long-distance/International Carriers	—	3	3	5	5	5	5	5	5	5	5	5	5	6	12
Regional Carriers	—	—	3	4	4	7	7	7	8	10	11	16	28	47	77
Satellite Carriers	—	2	2	2	2	2	2	3	3	2	2	4	4	5	6
Mobile Communications	—	—	3	24	32	46	52	53	61	58	82	90	90	84	72
Portable, Car Phones	—	—	—	2	4	8	8	9	15	15	17	21	21	21	21
Radio Paging	—	—	2	20	26	33	36	36	36	31	31	31	31	31	31
PHS	—	—	—	—	—	—	—	—	—	—	23	28	28	28	18
Convenience Radio Phone	—	—	—	—	—	2	4	4	7	7	7	6	6	—	—
Ship Telephone	—	—	—	—	—	1	2	3	2	2	1	—	—	—	—
Airport Radio Telephone	—	—	—	—	—	—	—	—	—	2	2	2	2	2	2
Data Communications	—	—	—	—	—	—	1	1	1	1	1	2	2	2	—
Other	—	—	—	1	1	—	—	—	—	—	—	—	—	—	—
Type II Carriers	85	209	356	530	693	841	943	1036	1179	1589	2107	3134	4588	5871	660
Special Carriers	—	9	10	18	25	28	31	36	36	39	44	50	78	95	88
General Carriers	85	200	346	512	668	813	912	1000	1143	1550	2063	3084	4510	5776	6514
Total	87	216	369	567	738	903	1011	1106	1259	1675	2218	3260	4726	6024	6780

Source: MINISTRY OF POSTS AND TELECOMMUNICATIONS, OUTLINE OF THE TELECOMMUNICATIONS BUSINESS IN JAPAN 4 (June 1999).

*Table Two: Examples of Main Foreign Investment in Japan's  
Telecommunication Carriers (As of 31 May, 1998)*

## (1) Type I Telecommunications Carriers

<i>Carriers</i>	<i>Major Foreign Investors</i>
DDI Corp.	State Street Bank and Trust Co. etc.
International Digital Communications, Inc.	Cable & Wireless plc ("C&W"), Air Touch International, Merrill Lynch & Co., Inc.
TU-KA Cellular Tokyo, Inc.	BT Holdings, GTE Corp., etc.
Tokyo Digital Phone Co., Ltd.	Air Touch International, C&W
NTT Central Personal Communications Network, Inc.	C&W, Nextel Communications
ASTEL Tokyo Corp.	GTE Corp., Mannesmann Eurocom, Bell Canada International
WorldCom Japan, Inc.	MCI WorldCom, Inc.

## (2) Special Type II Telecommunications Carriers

<i>Carriers</i>	<i>Major Foreign Investors</i>
AT&T Jens Corp.	AT&T Corp.
BT Network Information Service	British Telecom plc (UK) Co. Ltd.
IBM Japan Services Business	IBM WTC Co., Ltd.
Information Services International- Dentsu, Ltd.	GE Information Service
Cable & Wireless Japan	Cable & Wireless plc Communications Services Ltd.
Deutsche Telekom K.K.	Deutsche Telekom AG
Telstra Corp., Ltd.	Telstra Corp., Ltd. (Australia)
Clal-Nissei Corp.	Calcom (Israel)
Saturn Global Network Service Co., Ltd.	Saturn Global Service Japan Europe
Asia Internet Holding Co., Ltd. (Singapore)	Pacific Internet Super Net (Hong Kong)
AOL Japan, Inc.	America Online, Inc. (USA)
GAINS JAPAN Co., Ltd.	Tullett & Tokyo Forex Europe B.V. (the Netherlands)
Trans Pacific Telecom K.K.	Trans Pacific Telecom Ltd. (UK)
Teleglobe Services Japan, Inc. Corp.	Teleglobe International (USA)
TPC, Inc.	The Phone Co. (USA)

Source: MINISTRY OF POSTS AND TELECOMMUNICATIONS, OUTLINE OF THE TELECOMMUNICATIONS BUSINESS IN JAPAN 5-6 (June 1999).

NTT held a share of eighty-three percent. In the ¥2,307 billion cellular phone market in the same fiscal year, NCCs occupied a 44.7% share, while NTT held a share of 55.3%. In the ¥267 billion radio paging market, in the same fiscal year, NCCs also occupied a 39.7% share, while NTT held a 60.3% share. Thus, NCCs' share in the market of inter-prefectural calls, cellular phone, and radio paging conspicuously increased, but NTT still maintained a majority share in the domestic telecommunications market.

Due to the deregulation measures of international telecommunications, Japan Telecom Ltd. Co. and International Digital Communications, Inc. entered this market. In the entire international telecommunications market of ¥467 billion in revenue basis in FY 1996, NCCs occupied a thirty-two percent share while KDD held a sixty-eight percent share. In the ¥400 billion international telephone market of the same fiscal year, NCCs occupied a share of thirty-four percent, while KDD held a sixty-six percent share. In the international leased circuit market of ¥31 billion in the same fiscal year, NCCs occupied a thirty-one percent share, while KDD held a sixty-nine percent share.<sup>4</sup> Thus, NCCs' share in the international telecommunications market remarkably increased, but KDD still maintained a majority share.

#### D. *Reduction of Charges*

While charges by Type I carriers are subject to the MPT's approval, special Type II carriers need only notification—and even notification is not necessary to general Type II carriers. The NTT's charge for a long distance telephone call between Tokyo and Osaka, a distance of 500 km, for three minutes during weekly daytime hours was reduced by 77.5%, from ¥400 on April 1, 1985 to ¥90 on February 1, 1998. NCC charges the same rate. On the other hand, the Tokyo Telecommunication Network's charge was as low as ¥63 on March 1, 1998.

The KDD's charge for an international direct dial call between Japan and the United States for three minutes during daytime weekly hours was reduced by 70.6% from ¥1,530 on April 1, 1985 to ¥450 on November 23, 1996. NCC's charge is slightly

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4. MINISTRY OF POSTS AND TELECOMMUNICATIONS, OUTLINE OF THE TELECOMMUNICATIONS BUSINESS IN JAPAN, (June 1999) <<http://www.mpt.go.jp/whatsnow/yellowbook/index.html>> (on file the *Fordham International Law Journal*).

lower at ¥440. The NTT's charge of leased circuit service, 64 kbps between Tokyo and Osaka, was reduced by 84.6% from ¥1,100,000 on April 1, 1985 to ¥169,500 on September 1, 1995. The same charge for long-distance NCCs and regional NCCs, which use NTT's leased circuit—a maximum fifteen kilometers at both end of the NCC's leased circuit—was lower by ¥165,500 on June 1, 1998 and ¥138,000 on October 1, 1996, respectively.

The NTT's monthly basic charge for cellular phones was reduced by seventy-eight percent, from ¥30,000 on April 1, 1985 to ¥6600 for analog on June 1, 1997, and as low as ¥4900 for 800 MHz digital. The NCCs' same charge is even lower, ¥4600 for analog and ¥4500 for digital on June 1, 1997.<sup>5</sup>

As indicated above, since April 1, 1985 until August 1998, more than 6000 new carriers have entered into the telecommunications market with the result being reduced charges by more than seventy percent compared with those in 1985 through promotion of competition in domestic and international telecommunications.

#### *E. Facilities Investment*

In FY 1996, Type I carriers' facilities investment amounted to ¥4.1 trillion with a growth rate of 24.5% over the previous year. Both new and old Type I carriers incidentally hold an equal fifty percent share in the amount. In particular, mobile communicators occupy a 38.8% share, and NTT a 48.4% share of ¥1.991 trillion. Indeed, the facilities investment amount of ¥1.594 trillion by mobile communicators, which had surpassed the investment amount of the steel and iron industry in FY 1995, in FY 1996 surpassed that of the automobile industry, which is Japan's basic industry. This fact symbolically indicates the good result of deregulation in telecommunications.

#### *F. Outstanding Expansion of Mobile Phone Market*

While the growth rate for fixed telephone subscriptions increased from 46,771,699 in March 1987 to 61,244,213 in September 1997, the growth rate for mobile phone subscriptions increased dramatically from 95,131 in March 1987 to 41,446,615 in July 1998. While the former decreased by one percent over the

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5. *Id.* at 8.

previous year, the latter increased by forty-three percent over the same period. In the transition of the mobile phone market, NTT started their service in December 1979, separated Mobile Communications Network, Inc. from its Head Office in July 1992, and Mobile subsequently split into nine regional companies in July 1993. NCCs and Personal Handy-phone System carriers ("PHS") entered this market in December 1988 and July 1995 respectively. The outstanding expansion of the mobile phone market resulted from competition among the four digital mobile carriers in each regional block and diversification of terminal equipment following from adoption of customer owned and maintained systems—in April 1994, down-sized, weight-reduced, and low-priced terminals, and the reduction of charges. In the mobile phone market as of July 31, 1998, cellular phones occupied an 84.4% share while PHS held a 15.6% share. While NCC held a 51.6% share of cellular phones in FY 1995, they only occupied a 43.2% share in July 1998. The shift of mobile phone charges from the approval system to the prior notification system in December 1996 has contributed to elastic pricing and reduction of charges.

The current profit of NTT DoCoMo Co., which consists of nine regional mobile subsidiaries, totaled ¥364 billion in March 1999, and will be expected to surpass the profit of NTT itself by as much as ¥285 billion.<sup>6</sup> It symbolically indicates how much faster the mobile phone market is growing than the fixed phone market.

## II. *The Second Info-Communications Reform*

The Second Info-Communications Reform consists of deregulation, the promotion of network interconnection, and NTT's reorganization.<sup>7</sup>

### A. *Deregulation*

The MPT is implementing the items listed in the Three Year Program for the Promotion of Deregulations<sup>8</sup> determined at the

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6. See Nippon Economic Newspaper, (visited on Sept. 22, 1999) <<http://www.nni.nikkei.co.jp>> (on file with the *Fordham International Law Journal*).

7. MINISTRY OF POSTS AND TELECOMMUNICATIONS, *supra* note 4, 12-15.

8. See MINISTRY OF POSTS AND TELECOMMUNICATIONS, THREE YEAR PROGRAM FOR THE PROMOTION OF DEREGULATIONS (1997).

cabinet meeting held on March 31, 1998, and is continuing to review the regulations for promoting Japan's socioeconomic structural reform. One area the MPT has focused on is the deregulation of telecommunications charges. The requirement for authorization of end-user charges will be abolished and replaced, in principle, by a notification system. The MPT may order to change notified charges with a view of maintaining appropriateness if the calculation method of charges is not appropriately and precisely provided, unjustifiably discriminatory to certain persons, against users' interests because they would cause unfair competition with other telecommunications carriers, or considered inappropriate in light of their socioeconomic situation.

A price cap regulation will be applied to end-user charges for basic services, including subscriber telephone service in the regional telecommunications market where full-scale competition does not work. Under this regulation, the MPT can set feasible charges as an index to basic charges in light of appropriate costs, commodity prices, and other economic situations. In contrast, the KDD Co., Ltd. Law was abolished in July 1998 and KDD is now completely privatized.

The MPT also wishes to maintain regulations on the interconnection of networks. To maintain the transparency of the conditions for interconnection and to promote various forms of interconnection between telecommunications carriers, improvements will continue to be made in accordance with the report on the Basic Rules for Interconnection submitted by the Telecommunications Council in December 1996. The entire system will be reviewed toward the end of FY 2000.

There has been recent deregulation in the telecommunications field. A bill to repeal the clause on prevention of excess facilities<sup>9</sup> was passed by the Diet in June 1997. This revision was enacted in November 1997 following the preparation of related ministerial ordinances. Also, full-scale liberalization of leased circuit usage has been implemented. For example, the interconnection of both ends of domestic leased circuits with public switched networks for voice services was fully liberalized in October 1996. International Internet telephone services were liberalized in August 1997. The provision of basic voice services

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9. Article 10(i) and (ii) of the Telecommunications Business Law.

through the interconnection of both ends of international leased circuits with public switch networks was made possible in December 1997.

Restrictions on foreign capital investment have also been lifted. In line with the agreement reached at the World Trade Organization negotiations in February 1997, the Diet passed bills to revise the Telecommunications Business Law and the Radio Law in June 1997. The new laws removed all limitations on foreign investment in Type I telecommunications carriers, including those for radio station licenses, except for NTT and KDD. The revised clauses were enforced in February 1998, after the enactment of the Fourth Protocol to the General Agreement on Trade in Services.<sup>10</sup>

In October 1997, a blanket licensing system was introduced to make it unnecessary for applicants to obtain individual licenses for each mobile specified radio station. Applicants are permitted to establish more than one radio station of the same type with a single blanket license. The transborder use of overseas mobile specified radio stations is authorized if the blanket license holder has an additional operational permission.

The MPT has made efforts to maintain the transparency of their regulations.<sup>11</sup> In compliance with the Examination Standards Regarding the Telecommunications Business Law and the Examination Standards Regarding the Radio Law instituted in September 1994, the MPT processes applications for permission, as required by the related laws, within the standard processing period.

### *B. Promotion of Interconnection Policies*

The Telecommunications Council reported on the Basic Rules for Interconnection<sup>12</sup> to the MPT in December 1996. Tak-

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10. General Agreement of Trade in Services, in Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations, Apr. 15, 1994, Legal Instruments—Results of the Uruguay Round vol. 31 (1994), 33 I.L.M. 1168 (1994).

11. See MINISTRY OF POSTS AND COMMUNICATIONS, MANUAL FOR MARKET ENTRY INTO JAPANESE TELECOMMUNICATIONS BUSINESS (Mar. 1999) (containing official announcement of "Declaration of Standard Tariff for Radio Paging" published in "Official Government Gazette").

12. For Type I telecommunications carriers that own designated facilities—fixed local loop facilities in excess of the total number of subscriber lines at prefectural levels and intraprefectural telecommunications facilities installed as one system with those local loop facilities—the following obligations are imposed:

ing this into account, a bill of amendments, including the provision of the Basic Rules for Interconnection to the Telecommunications Business Law ("Rules") was passed by the Diet in June 1997, and enacted in November 1997. Upon enactment of the Rules, NTT filed an application for interconnection tariffs for designated telecommunications facilities, which was authorized by the MPT in March 1998.

### C. NTT's Reorganization Scheme

Although the NCC's market share in domestic telecommunications remarkably increased by deregulation, NTT still holds the majority share. Its operating revenue is enormous, totaling ¥8,821 billion in FY 1996 in comparison with AT&T, with ¥5,892 billion in revenue, Deutsche Telekom AG with ¥4,687 billion, France Telecom with ¥3,332 billion, and British Telecom with ¥2,951 billion.<sup>13</sup> With a view towards further promoting competition and maintaining fair and effective competition in the telecommunications market, the Rules were promulgated in which the NTT was reorganized and split into Eastern NTT Corp., Western NTT Corp., and NTT Long-distance Communications Corp., all under its holding company.<sup>14</sup> The NTT corporations, to be reorganized by December 22, 1999, would not be independent like the split AT&T companies. Both Eastern and Western NTT Corporations are special corporations engaged mainly in intra-prefectural communications in their respective regions, and are also obliged to provide universal telephone service to all of Japan. Between both companies comparative competition is expected, but not direct competition through entering the other's market. NTT Long-distance Communications Corp. is a private company specializing in inter-prefectural com-

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- introduction of an interconnection tariff system including interconnection charges and technical requirements, etc.;
  - preparation and disclosure of accounting reports concerning interconnection; and
  - preparation and disclosure of plans to revise or expand facility features or functions.

13. MINISTRY OF POSTS AND TELECOMMUNICATIONS, *supra* note 4, at 24. The exchange rate to Japanese yen used is the closing rate on January 6, 1997 (US\$1 = ¥116.65; DM1 = ¥74.29; FF1 = ¥21.98; £1 = ¥197.61).

14. The holding company will hold all shares of both Eastern and Western NTT. It will also hold all shares of the NTT Long-distance Communications Company for the time being.

munications, but it was permitted to enter the business of international communications through its affiliates in June 1997. KDD Co. was also permitted to enter the business of domestic communications through its affiliates on July 25, 1997. Thus, competition between NTT and KDD in both domestic and international telecommunications is expected.

### III. *Deregulation in the Aviation Business*

Until March 1986, Japan Air Lines ("JAL") monopolized Japan's overseas flights together with some service at domestic basic routes, while All Nippon Airways ("ANA") engaged in almost all domestic basic and local routes. Since then, ANA, which occasionally provided overseas chartered service, has entered the overseas regular aviation market. The number of passengers transported by these two companies at the route between Tokyo and Los Angeles increased by twenty-eight percent from 273,000 in FY 1985 to 350,000 in FY 1986, with an increase in share from 32.7% to 36.6%.<sup>15</sup> As of September 1996, both JAL and ANA competed at twenty-eight overseas air routes,<sup>16</sup> for example, between Tokyo or Osaka and New York, Los Angeles, Washington, D.C., London, Paris, Frankfurt, Beijing, or Sydney. Both JAL and Japan Air System ("JAS") also compete in the route between Tokyo and Seoul.<sup>17</sup> Competition between Japanese airline companies in their overseas air routes has contributed to increase the number of passengers transported by them and an increase of their shares.<sup>18</sup>

Since July 1986, double tracking and triple tracking has been vigorously implemented in domestic air routes as well. From FY 1986 to FY 1996, it was accomplished in forty-two

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15. MINISTRY OF TRANSPORTATION, FISCAL YEAR 1987 ANNUAL REPORT OF TRANSPORTATION 161 (1988).

16. MINISTRY OF TRANSPORTATION, FISCAL YEAR 1996 ANNUAL REPORT OF TRANSPORTATION 358 (1997).

17. As of August 1992 and 1993, three Japanese airlines—Japan Air Lines, All Nippon Airways, Japan Air System—competed for a route between Tokyo and Seoul, and between Tokyo and Singapore. See MINISTRY OF TRANSPORTATION, FISCAL YEAR 1992 ANNUAL REPORT OF TRANSPORTATION 251 (1992); MINISTRY OF TRANSPORTATION, FISCAL YEAR 1993 ANNUAL REPORT OF TRANSPORTATION 253 (1993).

18. The number of passengers transported by these two companies between Tokyo and Hong Kong increased by 31.5% from 540,000 in FY 1986 to 710,000 in FY 1987, with an increase in share from 36.2% to 39.9%. See MINISTRY OF TRANSPORTATION, FISCAL YEAR 1998 ANNUAL REPORT OF TRANSPORTATION 332 (1998).

routes, in particular, thirty-three routes from FY 1991. Of the twenty-four air routes that changed to double tracking and triple tracking from April 1991 to April 1996, sixteen routes saw a higher rate of increase during the previous three years. In response to intensified competition, airline companies began to cancel or reduce flights on unprofitable routes while increasing the number of flights on competitive routes.

In order to respond to the diversified need of users, the Ministry of Transportation ("MOT") replaced the approval system of fifty percent discount fares with the notification system in December 1994. Airline companies introduced a maximum thirty-six percent discount fare system for purchases made more than twenty-eight days in advance for domestic airline tickets in May 1995, and implemented a fare range system in May and June 1996. These systems have accelerated the diversification of fares. In 1996, following the adoption of a fare range system, a large portion of demand shifted from August, when fares are higher because of larger numbers of passengers, to July and September. More than forty percent of users replied that airfares seem cheaper and it is easier to travel by air due to discount fares.<sup>19</sup>

In December 1996, the MOT decided to abolish, in principle, the regulation on supply-demand control concerning the transport business. On the basis of this policy, it permitted the new entry of Skymark Airlines Co.<sup>20</sup> on the route between Tokyo and Fukuoka in Southern Japan on December 19, 1998 and Air Do Co.<sup>21</sup> on the route between Tokyo and Sapporo in Northern Japan on December 20, 1998. These new entries into the domestic aviation market were the first in thirty-five years. Both companies have a small amount of capital, which provides for only three flights per day by only one leased airplane, yet they charge a fifty percent reduced fare. The MOT permitted these reduced fares by assuming that they would not become predatory in pricing because of their small share of the market, only eight percent, and similarly reduced fares taken by the three other airline companies. Such new entries will promote further competition in the aviation market.

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19. MINISTRY OF TRANSPORTATION, FISCAL YEAR 1997 ANNUAL REPORT OF TRANSPORTATION 38-42 (1997).

20. This company was established by a Japanese travel agency called H.I.S.

21. People in Hokkaido established it in order to vitalize their economy.